

**STATE OF CONNECTICUT  
CONNECTICUT MEDICAL EXAMINING BOARD**

Robert J. Lucas, P.A.  
License No.: 000371

Petition No. 2002-1209-023-007

**MEMORANDUM OF DECISION**

***Procedural Background***

On May 28, 2004, the Department of Public Health ("the Department") presented a Statement of Charges to the Connecticut Medical Examining Board ("the Board") against the Connecticut physician assistant license of Robert J. Lucas ("respondent"). Board Exh. A. The Statement of Charges and Notice of Hearing were mailed via certified mail, return receipt requested on June 24, 2004. The Notice of Hearing informed the parties that a hearing would be held before a duly authorized panel of the Board, on Wednesday, September 8, 2004. Board Exh. A.

Respondent filed an Answer to the Statement of Charges on July 9, 2004.

The panel conducted the hearing in accordance with Connecticut General Statutes Chapter 54 (the Uniform Administrative Procedure Act). All panel members involved in this decision received copies of the entire record and attest that they either heard the case or read the record in its entirety. The Board reviewed the panel's proposed final decision in accordance with the provisions of Conn. Gen. Stat. § 4-179. The Board considered whether respondent poses a threat in the practice of medicine to the health and safety of any person. This decision is based entirely on the record and the specialized professional knowledge of the panel in evaluating the evidence.

***Allegations***

1. In paragraphs 1 and 5 of the Charges, the Department alleges that respondent is, and has been at all times referenced in the Charges, the holder of Connecticut physician assistant license number 000371. Respondent has at no time been licensed in Connecticut to practice medicine and surgery.
2. In paragraphs 2 and 5 of the Charges, the Department alleges that during at least 2002, respondent engaged in the unlicensed practice of medicine when he administered botox and collagen injections to patients at a beauty spa in Darien.

3. In paragraphs 3 and 5 of the Charges, the Department alleges that during at least 2002, respondent engaged in the unlicensed practice of medicine when he practiced without a written protocol and without the required supervision at a physician's office.
4. In paragraph 4 of the Charges, the Department alleges that the above-described facts constitute grounds for disciplinary action pursuant to the General Statutes of Connecticut, including, but not limited to § 20-9(a).
5. In paragraph 6 of the Charges, the Department alleges that during at least 2002, respondent practiced as a physician assistant without a written protocol with at least one of his registered supervising physicians.
6. In paragraph 7 of the Charges, the Department alleges that during at least 2002, respondent failed to provide patient charts and records for review on a regular basis to at least one of his registered supervising physicians.
7. In paragraph 8 of the Charges, the Department alleges that during at least 2002, respondent failed to maintain proper patient charts and records.
8. In paragraph 9 of the Charges, the Department alleges that during at least 2002, respondent practiced under the supervision of two physicians who were not registered with the Department as supervising physicians.
9. In paragraph 10 of the Charges, the Department alleges that the facts described in paragraphs 1 through 8 of the Charges constitute grounds for disciplinary action pursuant to the General Statutes of Connecticut, including but not limited to:
  - a. § 20-12c(a);
  - b. § 20-12c(b);
  - c. § 20-12d(a);
  - d. § 20-12d(c); and/or
  - e. § 20-12f.

***Findings of Fact***

1. Respondent is the holder of Connecticut physician assistant license number 000371. Board Exh. B.
2. Respondent has at no time been licensed to practice medicine and surgery in Connecticut. At all relevant times, respondent has been licensed to practice as a physician assistant, having license number 000371. Tr., pp. 185-212; Board Exh. B; Dept. Exh. 1.
3. Dr. Christine L. Hamilton-Hall was registered with the Department of Public Health in 1999 as a supervising physician. Tr., p. 195; Dept. Exh. 1B.

4. During at least 2002, Dr. Hamilton-Hall was acting as respondent's supervising physician and oversaw and directed the medical services provided by respondent to their patients. Tr., pp. 32-33, 36, 186; Dept. Exh. 1E. During that time, respondent administered botox and collagen injections to patients at a beauty spa in Darien without active and direct physician supervision at that specific location. Tr., pp. 186, 190; Dept. Exh. 1A.
5. Dr. Hamilton-Hall's office is located a few blocks away from said beauty spa. Tr., pp. 33, 36.
6. During at least 2002, Dr. Hamilton-Hall was never present at said beauty spa to provide supervision for respondent while he administered botox and collagen injections to patients. Tr., pp. 33-41, 89, 90; Resp. Exh. A. When the respondent provided treatment to patients at said beauty spa during 2002, Dr. Hamilton-Hall was available by telephone. Dept. Exh. 1E.
7. During at least 2002, respondent lacked a written protocol for supervision by Dr. Hamilton-Hall. Instead, he had a verbal agreement for supervision.. Tr., pp. 37, 90, 91, 187; Dept. Exh. 1F
8. During at least 2002, respondent was adequately supervised by Dr. Hamilton-Hall while treating patients at her office but did so without written protocols. Tr., p. 187; Dept. Exh. 1F.
9. During 2002, respondent also worked as a physician assistant for Dr. Salvatore Farrugio; and, during 2001 and 2002, respondent worked for Dr. Theodore Kramer as a physician assistant at the same locations that the physicians practiced. Dept. Exh. 1B, 1G.
10. Dr. Farruggio and Dr. Kramer were not registered with the Department of Public Health as supervising physicians until 2003. Tr., pp. 187, 188; Dept. Exh. 1B, 1G.
11. During at least 2002, respondent provided patient charts and records for review on a regular basis to Drs. Farruggio, Kramer and Hamilton-Hall. Tr., pp. 173-176, 189, 191; Dept. Exh. 1E, 1F.
12. During at least 2002, respondent failed to maintain proper patient charts and records. Tr., pp. 94-100, 166, 167, 182-184; Dept. Exh. 1H.

#### ***Discussion and Conclusions of Law***

The Department bears the burden of proof by a preponderance of the evidence in this matter. *Steadman v. Securities and Exchange Commission*, 450 U.S. 91, 101 S.Ct. 999, *reh'g denied*, 451 U.S. 933 (1981); *Swiller v. Commissioner of Public Health*, Superior Court, judicial district of Hartford/New Britain at Hartford, Docket No. 573367 (February 19, 1998, Hodgson, J.).

Section 19a-10 of the Connecticut General Statutes provides in pertinent part, “[Boards] . . . may conduct hearings on any matter within their statutory jurisdiction. Such hearings shall be conducted in accordance with Chapter 54 and the regulations established by the Commissioner of Public Health.”

Pursuant to Connecticut General Statutes § 20-12f: “The board shall have jurisdiction to hear all charges of conduct which fails to conform to the accepted standards of the physician assistant profession brought against persons licensed to practice as a physician assistant. . . . The board may take any action set forth in section 19a-17 if it finds that a person licensed as a physician assistant . . . fails to conform to the accepted standards of the physician assistant profession.” Pursuant to Conn. Gen. Stat. § 19a-17, the Board is authorized to suspend, or revoke the license of a physician assistant or to issue a letter of reprimand to a physician assistant, place a physician assistant on probation and to assess a civil penalty of up to ten thousand dollars. The Board finds that the Department met its burden of proof with respect to allegations 1 through 6, and 8 through 10 of the Charges.

A physician assistant is a person who: “(A) Functions in a dependent relationship with a physician licensed pursuant to this chapter; and (B) is licensed pursuant to section 20-12b to provide patient services under the supervision, control, responsibility and direction of said physician.” Conn. Gen. Stat. § 20-12a(5). Supervision means:

The exercise by the supervising physician of oversight, control and direction of the services of a physician assistant. Supervision includes but is not limited to (A) continuous availability of direct communication either in person or by radio, telephone or telecommunications between the physician assistant and the supervising physician; (B) active and continuing overview of the physician assistant’s activities to ensure that the supervising physician’s directions are being implemented and to support the physician assistant in the performance of his services (C) personal review by the supervising physician of the physician assistant’s practice at least weekly or more frequently as necessary to ensure the quality patient care; (D) review of the charts and records of the physician assistant on a regular basis as necessary to ensure quality patient care; (E) delineation of a predetermined plan for emergency situations; and (F) designation of an alternate license physician in the absence of the supervising physician.

Conn. Gen. Stat. § 20-12a(7). The supervising physician is responsible for the supervision of services rendered by a physician assistant and must be licensed in the State of Connecticut. Conn. Gen. Stat. § 20-12a(6). A physician may function as a supervising physician provided that the supervision is “active and direct, and at the specific location in which

the physician assistant is practicing.” Conn. Gen. Stat. § 20-12c(b). The supervising physician is required to registered with the Department of Public Health pursuant to Conn. Gen. Stat. § 20-12c and comply with all of the requirements of that section.

A physician assistant may perform medical functions delegated to them by a supervising physician when the supervising physician is satisfied with the physician assistant’s ability and competency; when the delegation is consistent with the health and welfare of the patient and sound medical practice; and when the functions “are performed under the oversight, control, and direction of the supervising physician.” Conn. Gen. Stat. § 20-12d(a). The functions that may be performed under such delegation are those that are (1) within the scope of the supervising physician’s license; (2) within the scope of the physician’s competence, as evidenced by such physician’s postgraduate education, training and experience; and (3) within the normal scope of such physician’s actual practice. Conn. Gen. Stat. § 20-12(d)(a). Delegated functions shall be implemented in accordance with written protocols. Conn. Gen. Stat. § 20-12(d)(a).

Under this statutory scheme, a physician assistant functions in a dependent relationship with a licensed physician, and provides patient services under the supervision, control, responsibility and direction of said physician. See Conn. Gen. Stat. §§ 20-9(b)(14), 20-12a(5), and 20-12d(a)(3). Section 20-12d(c) of the Connecticut General Statutes mandates that “No physician assistant may: (1) Engage in the independent practice of medicine. . . .”

In allegations numbered 1 and 5 of the Charges, a preponderance of the evidence establishes that respondent is licensed to practice as a physician assistant. (Findings of Fact (“FF”) ¶¶ 1, 2.) The Board finds that although respondent may perform medical functions, he may only do so under the delegation, supervision, control and responsibility of a supervising physician as set forth in Conn. Gen. Stat. § 20-12d. Absent the supervision, control, responsibility and direction of a licensed physician, respondent is prohibited from providing medical care. See Conn. Gen. Stat. § 20-9(b)(14), 20-12c, 20-12d.

In accordance with § 20-12c(b) of the Connecticut General Statutes:

A physician may function as a supervising physician for as many physician assistants as is medically appropriate under the circumstances, provided (1) the supervision is active and direct, and at the specific location in which the physician assistant is practicing. . . .

With respect to allegations numbered 2 and 5 of the Charges, the Board finds respondent engaged in the independent practice of medicine when he administered botox and collagen injections to patients at a beauty salon in Darien. Dr. Christine L. Hamilton-Hall claimed that she was respondent's supervising physician for his practice at the beauty spa in Darien during 2002. Dr. Hamilton-Hall's office is located within a few blocks of the Darien beauty salon at which respondent was providing patient services. The record reveals, however, that Dr. Hamilton-Hall did not provide active and direct supervision at the Darien beauty salon because Dr. Hamilton-Hall never stepped foot in the beauty salon, and only saw respondent's patients if they went to her office. Although Dr. Hamilton-Hall contends that respondent "is in constant communication with her, as necessary, by telephone," the Board finds that Dr. Hamilton-Hall's failure to provide active and direct supervision at the beauty salon renders respondent's practice of administering botox and collagen injections at the Darien salon a violation of the statute. FF. 3-6.

Section 20-12d(a) of the Statutes provides that functions delegated by a supervising physician "shall be implemented in accordance with written protocols established by the supervising physician." In allegations numbered 3, 5, and 6 of the Charges, a preponderance of the evidence establishes that during 2002, respondent failed to have a written protocol with his registered supervising physician, Dr. Hamilton-Hall for any location where he practice under her supervision. Although respondent was unable to testify definitely whether or not he had any written protocols in 2002, documentation in the record reveals that that respondent's services "[were] delineated by verbal agreement and primarily include serving as an assistant to these physicians and/or providing collagen and botox treatment to patients." The lack of a written protocol is further supported by Diane Cybulski, Nurse Consultant for the Department, who credibly testified that during her investigation, Dr. Hamilton-Hall informed her that she did not have a written protocol with respondent. FF. 7. Nor did the respondent submit as evidence at the hearing copies of written protocols with Dr. Hamilton-Hall from 2002.

The Board finds, however, that with respect to allegations numbered 3 and 5 of the Charges, the Department failed to meet its burden of proof that respondent engaged in the independent practice of medicine without the required supervision *at* Dr. Hamilton-Hall's office. While providing care at Dr. Hamilton-Hall's office although there was no written protocols, respondent was properly supervised by Dr. Hamilton-Hall. FF. 8.

With respect to allegation numbered 7 of the Charges, the Department failed to meet its burden of proof. Documentation in the record reveals that respondent provided physicians with data for regular review, progress notes, digital photographs of patients and his schedule of patient appointments. Respondent testified that such information was provided to all of his registered supervising physicians – Drs. Farruggio, Kramer, and Hamilton-Hall. This fact is further supported by Dr. Hamilton-Hall's affidavit that respondent did, in fact, provide patient charts and records to her for review on a regular basis. FF. 11.

The Board finds that the Department met its burden of proof with respect to allegation numbered 8 of the Charges. The Board has reviewed the patient charts and records submitted as evidence by the Department and concludes, based on its expertise, that the charts and records fail to meet the minimum standard of practice for a physician assistant. The charts and records are lacking patient histories, records of physical examinations and treatment plans. See also FF. 12.

In accordance with § 20-12c(a) of the Statutes, “[n]o physician assistant issued a license or temporary permit by the department shall practice until such time as a supervising physician has been registered with the department.”

With respect to allegation numbered 9 of the Charges, the evidence establishes that during 2001 and 2002, respondent practiced under the supervision of two physicians who were not registered with the Department as supervising physicians. More specifically, operative notes establish that respondent practiced under the supervision of Dr. Salvatore Farruggio during 2002, and Dr. Theodore Kramer during 2001 and 2002. However, the evidence establishes that Dr. Farruggio was not registered to be a supervising physician until April 24, 2003, and Dr. Kramer was not registered to be a supervising physician until February 28, 2003. Thus, Drs. Farruggio and Kramer were not registered in compliance with the statutes during 2001 or 2002 to supervise respondent. FF. 9, 10.

A preponderance of the evidence establishes that respondent failed to meet the minimum standard of practice as a physician assistant by engaging in conduct in violation of §§ 20-9(a), 20-12c(a), 20-12c(b), 20-12d(a), and 20-12d(c) of the Connecticut General Statutes with respect to allegations 1 through 6, and 8 through 10 of the Charges. As such, respondent's license is subject to disciplinary action as prescribed in Connecticut General Statutes §§ 20-12f and 19a-17.

***Order***

Based upon the record in this case, the above findings of fact and the conclusions of law, and pursuant to the authority vested in it by Conn. Gen. Stat. §§ 19a-17 and 20-12f, the Board orders the following in the case of Robert J. Lucas, Petition No. 2002-1209-023-007, who holds Connecticut physician assistant license number 000371:

1. Respondent is hereby ordered to cease and desist from engaging in the independent practice of medicine at the beauty spa in Darien, CT.
2. Respondent's license number 000371 to practice as a physician assistant in the State of Connecticut is hereby reprimanded.
3. Respondent shall pay a civil penalty in the amount of five thousand dollars (\$5,000.00) by certified or cashier's check payable to "Treasurer, State of Connecticut." The check shall reference the Petition Number on the face of the check, and shall be payable within thirty days of the effective date of this Decision.
4. Respondent's license shall be placed on probation for six months after the effective date of this Decision.
  - a. During the period of probation, respondent shall submit to the Department copies of written protocols from each of his supervising physicians. All written protocols are to be postmarked and sent via certified mail within two (2) weeks from the execution of this Order. If the Department or its designee determines that the protocols do not comply with the standards of practice or legal requirements, written notice of the deficiencies shall be provided via certified mail to the respondent and the supervising physician within two (2) weeks of the Department's receipt of the protocols. Respondent shall correct the deficiencies and resubmit the protocols within two (2) weeks of the mailing of the notice. Failure to correct the deficiencies shall be a violation of probation.
  - b. Within two weeks of the effective date of this decision, respondent shall obtain at his own expense, the services of a physician, pre-approved by the Department (hereinafter the "practice monitor"), to conduct a monthly random review of twenty (20%) percent or twelve (12) of respondent's patient records, created or updated during the probationary period, whichever is the larger number. Respondent shall not use as a practice monitor any of his supervising physicians.



In the event respondent has twelve (12) or few patients, the practice monitor shall review all of respondent's patient records.

- a) Respondent shall provide a copy of this Decision to his practice monitor.
  - b) Respondent's practice monitor shall furnish written confirmation to the Department of his or her engagement in that capacity and receipt of a copy of this Decision within fifteen (15) days of receipt.
  - c) Respondent's practice monitor shall meet with him not less than once every month for the sixth months of his probationary period.
  - d) The practice monitor shall have the right to monitor respondent's practice by any other reasonable means which he or she deems appropriate. Respondent shall fully cooperate with the practice monitor in providing such monitoring.
  - e) Respondent shall be responsible for providing written practice monitor reports directly to the Department for the entire probationary period. Such practice monitor's reports shall include documentation of dates and durations of meetings with respondent, number and a general description of the patient records, additional monitoring techniques utilized, and an evaluation of whether the respondent is practicing with reasonable skill and safety, including but not limited to compliance with the standards of practice governing record keeping.
  - f) At anytime during probation, the Department, with written notice to the respondent, may request that the Board order respondent attend and complete an educational course on medical record keeping based upon deficiencies in the records reviewed. The Board may order such a requirement as an additional condition of probation.
5. Respondent shall be responsible for all costs associated with the satisfaction of the terms of this Memorandum of Decision.

6. All reports, correspondence and/or other communication with the Department and/or Board required pursuant to this Order shall be sent to:

Bonnie Pinkerton  
Department of Public Health  
410 Capitol Avenue, MS #12HSR  
P.O. Box 340308  
Hartford, CT 06134-0308

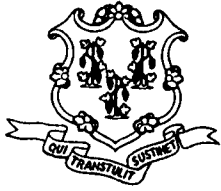
7. Respondent shall inform the Department in writing of his current address and any change thereto during the period of probation. All notices provided to respondent will be sent to the most current address of respondent on file with the Department.
8. This Order shall become effective upon the signature of the Board Chairperson.

10-18-05

Date



By: Dennis G. O'Neill, M.D., Chairman  
Connecticut Medical Examining Board



# STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC HEALTH

May 10, 2006

Robert Lucas, PA  
8 Outer Road  
Norwalk, CT 06854

Re: Memorandum of Decision  
Petition No. 2002-1209-023-007  
License No. 000371

Dear Mr. Lucas:

Please accept this letter as notice that you have satisfied the terms of your license probation, effective April 18, 2006.

Notice will be sent to the Department's Licensure and Registration section to remove all restrictions from your license related to the above-referenced Memorandum of Decision.

Please be certain to retain this letter as documented proof that you have completed your license probation.

Thank you for your cooperation during this process.

Very truly yours,

Bonnie Pinkerton, RN, Nurse Consultant  
Practitioner Licensing and Investigations Section

cc: J. Filippone



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